

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS**

INTELLECT WIRELESS, INC., ,)
)
) No. 08 C 1215
)
 Plaintiff,)
)
) Hon Joan B. Gottschall
)
 v.)
)
)
 T-MOBILE USA, INC., UNITED STATES)
 CELLULAR CORP., VIRGIN MOBILE USA.,)
 and HELIO, INC.,)
)
)
 Defendants.)

**DEFENDANT UNITED STATES CELLULAR CORPORATION'S
FIRST AMENDED ANSWER AND COUNTERCLAIM**

Defendant United States Cellular Corporation (“US Cellular”), for its answer to the complaint of plaintiff Intellect Wireless, Inc. (“Intellect Wireless”), states as follows:

ANSWER

Complaint, ¶1: This is a claim for patent infringement arising under the patent laws of the United States, Title 35 of the United States Code.

ANSWER: US Cellular admits that Intellect Wireless has alleged patent infringement and invoked the cited statute, but US Cellular denies that it has infringed and denies any liability to Intellect Wireless.

Complaint, ¶ 2: Intellect Wireless is a Texas corporation with offices in Fort Worth, Texas and Reston, Virginia. Intellect Wireless is in the business of, among other things, commercializing its inventions relating to wireless image messaging.

ANSWER: US Cellular is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph.

Complaint, ¶3: Daniel Henderson is the founder of Intellect Wireless, and the sole inventor of the patents-in-suit. Mr. Henderson has been awarded 25 United States patents with several more pending that relate to picture/video messaging in wireless devices such as PDA's, portable computers and cellular phones. Mr. Henderson's prototype for a wireless picturephone device was received as part of the permanent collection of the Smithsonian Institution in the National Museum of American History. The Honorable Senator Gordon H. Smith, (OR), declared that Mr. Henderson has "truly blazed new trails in the fields of wireless technology and digital convergence" and called him a "true visionary."

ANSWER: US Cellular is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph.

Complaint, ¶4: Intellect Wireless owns all right, title, interest in and has standing to sue for the infringement of United States Patent No. 7,257,210 entitled "Picture Phone with Caller ID" which issued on August 14, 2007 ("the '210 Patent").

ANSWER: US Cellular is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph.

Complaint, ¶5: Intellect Wireless owns all right, title, interest in and has standing to sue for the infringement of United States Patent No. 7,305,076 entitled "Method and Apparatus for Improved Paging Receiver and System" which issued on December 4, 2007 ("the '076 Patent").

ANSWER: US Cellular is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph.

Complaint, ¶6: Intellect Wireless owns all right, title interest in and has standing to sue for the infringement of United States Patent No. 7,266,186 entitled "Method and Apparatus

for Improved Paging Receiver and System” which issued on September 4, 2007 (“the ‘186 Patent”).

ANSWER: US Cellular is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph.

Complaint, ¶7: T-Mobile is a Delaware corporation with corporate headquarters at 12920 SE 38th Street, Bellevue, Washington 98006.

ANSWER: US Cellular is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph.

Complaint, ¶8: T-Mobile makes, uses, sells, offers for sale and/or imports cellular telephone services that receive messages including non-facsimile pictures and caller ID information.

ANSWER: US Cellular is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph.

Complaint, ¶9: US Cellular is a Delaware corporation with corporate headquarters at 8410 West Bryn Mawr Avenue, Suite 700, Chicago, Illinois 60631.

ANSWER: US Cellular admits the allegations of this paragraph.

Complaint, ¶10: US Cellular makes, uses, sells offers for sale and/or imports wireless communications services that receive messages including non-facsimile pictures and caller ID information.

ANSWER: US Cellular admits that it offers wireless communications services. US Cellular is without knowledge or information sufficient to form a belief as to the whether these communications services receive caller ID information and non-facsimile pictures.

Complaint, ¶11: Virgin is a Delaware corporation with corporate headquarters at 10 Independence Blvd., Warren, New Jersey 07059.

ANSWER: US Cellular is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph.

Complaint, ¶12: Virgin makes, uses, sells, offers for sale and/or imports wireless communications services that receive messages including non-facsimile pictures and caller ID information.

ANSWER: US Cellular is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph.

Complaint, ¶13: Helio is a Delaware corporation with corporate headquarters at 10960 Wilshire Blvd., Suite 700, Los Angeles, California 90024.

ANSWER: US Cellular is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph.

Complaint, ¶14: Helio makes, uses, sells, offers for sale and/or imports wireless communications services that receive messages including non-facsimile pictures and caller ID information.

ANSWER: US Cellular is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph.

Complaint, ¶15: This Court has exclusive jurisdiction over the subject matter of this case under 28 U.S.C. § 1338(a).

ANSWER: US Cellular admits the allegations of this paragraph.

Complaint, ¶16: Venue is proper in this judicial district under 28 U.S.C. §§1391 and 1400(b). T-Mobile, US Cellular, Virgin, and Helio transact business in this district, at least by offering to sell or selling infringing cellular telephones and services to Illinois customers in this judicial district and through internet websites that are designed to reach Illinois customers and are, in fact, used by customers in this judicial district. T-Mobile, US Cellular, Virgin and Helio do business and have committed acts of infringement in this judicial district. T-Mobile owns retail stores in this judicial district including, but not limited to, a retail location at 5 Woodfield Mall, D-308, Schaumburg, IL 60173. US Cellular has its headquarters in this judicial district and transacts substantial business here. Helio owns retail stores in this judicial district including, but not limited to, a retail location at 5 Woodfield Shopping Center, Schaumburg, IL 60173.

ANSWER: US Cellular admits that venue is proper in this district under 28 U.S.C. §§1391 and 1400(b). US Cellular admits that it conducts business in this district. US Cellular admits that T-Mobile does business in this district. US Cellular denies that it sells or offers to sell infringing cellular telephones and/or services. US Cellular denies that it has committed acts of infringement. US Cellular is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of this paragraph.

Complaint, ¶ 17: T-Mobile has directly and/or indirectly infringed at least one claim of the '210 patent, the '076 patent, and the '186 patent by making, using, selling and/or offering to sell wireless communication plans, packages and/or services that include, or optionally include, Caller ID, picture and video messaging and /or Multimedia Messaging Service.

ANSWER: US Cellular is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph.

Complaint, ¶ 18: T-Mobile has contributorily infringed or induced infringement of at least one claim of the '210 patent, the '076 patent, and the '186 patent in violation of 35 U.S.C. § 271 through, among other activities, by providing plans, packages and/or services that include, or optionally include caller ID and video messaging and/or Multimedia Messaging Service and demonstrating and instructing subscribers to its plans, packages and/or services how to utilize its picture and video messages service and/or Multimedia Messaging Service through its websites at www.t-mobile.com and support.t-mobile.com.

ANSWER: US Cellular is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph.

Complaint, ¶19: T-Mobile's infringement, contributory infringement and/or inducement to infringe has injured Intellect Wireless and it is entitled to recover damages adequate to compensate it for such infringement, but in no event less than a reasonable royalty.

ANSWER: US Cellular is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph.

Complaint, ¶20: US Cellular has directly and/or indirectly infringed one or more claims of the '210 patent, the '076 patent, and the '186 patent by making, using, selling and offering to sell wireless communication plans, packages and/or services that include, or optionally include, Caller ID, picture and/or Multimedia Messaging Service.

ANSWER: US Cellular denies the allegations of this paragraph.

Complaint, ¶21: US Cellular has contributorily infringed or induced infringement of at least one claim of the '210 patent, the '076 patent, and the '186 patent in violation of 35 U.S.C. § 271 through, among other activities, by providing plans, packages and/or services that include, or optionally include caller ID and/or Multimedia Messaging Service and demonstrating and instructing subscribers to its plans, packages and/or services how to utilize its picture and/or Multimedia Messaging Service through its websites at <http://easyedge.uscc.com>.

ANSWER: US Cellular denies the allegations of this paragraph.

Complaint, ¶22: US Cellular's infringement, contributory infringement and/or inducement to infringe has injured Intellect Wireless and it is entitled to recover damages adequate to compensate it for such infringement, but in no event less than a reasonable royalty.

ANSWER: US Cellular denies the allegations of this paragraph.

Complaint, ¶23: Virgin has directly and/or indirectly infringed one or more claims of the '210 patent, the '076 patent, and the '186 patent by making, using, selling and offering to sell wireless communication plans, packages and/or services that include, or optionally include, Caller ID, picture messaging and/or Multimedia Messaging Service.

ANSWER: US Cellular is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph.

Complaint, ¶24: Virgin has contributorily infringed or induced infringement of at least one claim of the '210 patent, the '076 patent, and the '186 patent in violation of 35 U.S.C. § 271 through, among other activities, by providing plans, packages and/or services that include, or optionally include caller ID and/or Multimedia Messaging Service and demonstrating and instructing subscribers to its plans, packages and/or services how to utilize its picture and/or

Multimedia Messaging Service through its websites at <http://www.virginmobileusa.com> and <http://web.virginmobileusa.com>

ANSWER: US Cellular is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph.

Complaint, ¶25: Virgin's infringement, contributory infringement and/or inducement to infringe has injured Intellect Wireless and it is entitled to recover damages adequate to compensate it for such infringement, but in no event less than a reasonable royalty.

ANSWER: US Cellular is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph.

Complaint, ¶26: Helio has directly and/or indirectly infringed one or more claims of the '210 patent, the '076 patent, and the '186 patent by making, using, selling and offering to sell wireless communication plans, packages and/or services that include, or optionally include, Caller ID, picture and video messaging and/or Multimedia Messaging Service.

ANSWER: US Cellular is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph.

Complaint, ¶27: Helio has contributorily infringed or induced infringement of at least one claim of the '210 patent, the '076 patent, and the '186 patent in violation of 35 U.S.C. § 271 through, among other activities, by providing plans, packages and/or services that include, or optionally include caller ID and video messaging and/or Multimedia Messaging Service and demonstrating and instructing subscribers to its plans, packages and/or services how to utilize its picture and video messages service and/or Multimedia Messaging Service through its websites at <http://www.helio.com> and <http://downloads.helio.com>.

ANSWER: US Cellular is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph.

Complaint, ¶28: Helio's infringement, contributory infringement and/or inducement to infringe has injured Intellect Wireless and it is entitled to recover damages adequate to compensate it for such infringement, but in no event less than a reasonable royalty.

ANSWER: US Cellular is without knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph.

SEPARATE DEFENSES

1. U.S. Cellular cannot be liable for infringement because the '210, the '076 and the '186 patents are invalid for failure to comply with the conditions of patentability, including but not limited to 35 U.S.C. §§101, 102, 103 and/or 112.

2. On information and belief, Intellect Wireless lacks sufficient ownership rights and title to enforce the claims of the '210, '076, and '186 patents.

3. Intellect Wireless's claims for damages are barred, in whole or in part, because of a failure to satisfy the requirements of 35 U.S.C. § 287(a).

4. Intellect Wireless's claims are barred by the doctrine of prosecution laches. Intellect Wireless unreasonably delayed prosecuting and/or seeking issuance of the '210, '076 and '186 patents and is now barred from recovery.

5. By reason of the proceedings in the PTO, including the prosecution of the applications which resulted in the '210, '076, and '186 patents, and by reason of elections, positions, concessions, representations, and statements therein taken or made by or on behalf of the applicants, Intellect Wireless is estopped from construing the claims of the patents in suit,

even if it were otherwise possible, to cover any products made, used or sold by US Cellular or any acts of US Cellular.

COUNTERCLAIM

For its counterclaim against Intellect Wireless, US Cellular states as follows:

Parties

1. US Cellular is a corporation organized under the laws of the State of Delaware, with its principal place of business at 8410 W. Bryn Mawr Ave., Chicago, Illinois 60631.

2. On information and belief, Intellect Wireless is a Texas corporation and has a principal place of business in Fort Worth, Texas.

Jurisdiction

3. The counterclaims include claims for declaratory judgment of patent non-infringement and patent invalidity, arising under the patent laws of the United States, 35 U.S.C. § 100, *et seq.* and the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202. Thus, this Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a).

Count I – Declaratory Judgment of Non-Infringement

4 Intellect Wireless has charged US Cellular with infringement of the ‘210, ‘076, and ‘186 patents by filing a complaint against US Cellular.

5. US Cellular has not been and is not now infringing, contributorily infringing, or inducing infringement of any claim of the ‘210, ‘076, and ‘186 patents. In light of Intellect

Wireless' complaint, there exists an actual controversy between Intellect Wireless and US Cellular regarding these patents.

6. Accordingly, a valid and justiciable controversy has arisen and exists between Intellect Wireless and US Cellular. Pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 2201 *et seq.*, US Cellular requests a judicial determination and declaration of non-infringement of the '210, '076, and '186 patents.

Count II – Declaratory Judgment of Invalidity

7. Intellect Wireless has charged US Cellular with infringement of the '210, '076, and '186 patents by filing a complaint against US Cellular.

8. US Cellular contends that the claims of the '210, '076, and '186 patents are invalid for failure to comply with the conditions of patentability, including but not limited to 35 U.S.C. §§ 101, 102, 103, and 112. Based on the filing of this suit, US Cellular believes that Intellect Wireless contends that the claims of the '210, '076, and '186 patents are valid and enforceable.

9. Accordingly, a valid and justiciable controversy has risen and exists between Intellect Wireless and US Cellular. Pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 2201 *et seq.*, US Cellular requests a judicial determination and declaration that each of the claims of the '210, '076, and '186 patents are invalid for failure to comply with the conditions of patentability, including, but not limited to 35 U.S.C. §§ 101, 102, 103, and 112.

PRAYER FOR RELIEF

WHEREFORE, US Cellular prays for judgment in its favor and against Intellect Wireless as follows:

1. That Intellect Wireless' complaint be dismissed with prejudice and that Intellect Wireless take nothing by way of its complaint;
2. That judgment be entered in favor of US Cellular declaring that US Cellular has not been and is not now infringing, contributorily infringing, or inducing infringement of any claims of the '210, 076, and '186 patents;
3. That judgment be entered declaring each of the claims of the '210, 076, and '186 patents are invalid; and
4. That US Cellular be awarded its expenses, costs, and attorneys' fees under 35 U.S.C. § 285, along with any other and further relief as the Court deems just and proper.

Dated: April 15, 2008

UNITED STATES CELLULAR CORPORATION

By: /s/ Nabeel U. Khan
One of Its Attorneys

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CERTIFICATE OF SERVICE

The undersigned certifies that on the 15th day of April 2008, all counsel of record who are deemed to have consented to electronic service are being served a true and correct copy of the foregoing using the Court's CM/ECF system, in compliance with Local Rule 5.2(a).

By /s/ Nabeel U. Khan
Nabeel U. Khan